

In the Court of Appeals of the State of Alaska

Carlton William Donnelly,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13598**

Order

Date of Order: **October 1, 2021**

Trial Court Case No. **3AN-14-08520CR**

Before: Wollenberg, Harbison, and Terrell, Judges

Carlton William Donnelly is appealing his convictions for third-degree assault, second- and fourth-degree misconduct involving a controlled substance, and failure to stop at the direction of a peace officer. Through his attorney, the Public Defender Agency, Donnelly previously received two extensions of time to file the opening brief in this case.

Donnelly initially requested, and received, a full 390-day extension under Standing Order No. 12.

At the expiration of this time, Donnelly requested an additional extension of 128 days. In that extension request, the supervising attorney of the Agency's appellate section, Deputy Public Defender Renee McFarland, stated that Mr. Donnelly's case was number 6 on the Agency's assignment list and that she had not yet assigned the case to an attorney for briefing. She explained, however, that she had identified a possible attorney to whom she would assign the case, and that her requested extension was intended to allow the assigned attorney to meet the briefing deadline without the need to request an additional extension. The assigned attorney, Assistant Public Defender Sharon Barr, entered an appearance the following day.

We partially denied the requested extension, stating that it did “not comply with the mandates of Standing Order No. 12.” We expressed particular concern that, at the time of the extension request, the case had not yet been assigned, and we clarified that “the resource shortages at the Public Defender Agency are not ‘extraordinary and unforeseeable circumstances’ justifying an extension of time beyond the limit of Standing Order No. 12.” We recognized, however, that we had previously granted non-routine extension requests based on similar information, and we accordingly granted a 90-day extension (until September 27, 2021). We stated, however, that “[n]o further extensions based solely on the ordinary press of business will be granted in this case.”

On September 27, 2021 — the due date for the opening brief in this case — Ms. Barr moved for another extension of time to file the opening brief. In particular, Ms. Barr seeks an extension of time until December 30, 2021 — an additional 94 days. If the Court grants this request, the time for filing the opening brief in this case will be extended 574 days — significantly beyond the 390-day limit set out in Standing Order No. 12 (and beyond the extraordinary extension previously requested and denied in part).

In the affidavit accompanying the extension request, Ms. Barr documents the briefs she has filed and the cases she is working on, as well as her various other work-related responsibilities. We do not question Ms. Barr’s diligence in working on her cases. But it is clear from Ms. Barr’s affidavit that little, if any, work has been done on this appeal, notwithstanding Ms. McFarland’s assertion that her request for an extraordinary extension time in unassigned cases is intended to account for the time it will ultimately take the assigned attorney to complete the opening brief.

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We are also concerned that appellate attorneys with cases beyond the Standing Order No. 12 limit are being asked to perform duties outside of the appellate unit with no apparent accounting for the effect of these duties on the briefing deadlines set by the Court. For example, Ms. Barr explains that she spent a week in Ketchikan covering trial court hearings due to the absence of any staff attorney coverage in the Agency's Ketchikan office — and that during that week, she had no time to work on appellate cases. But as we stated in our previous order, the resource shortages at the Agency do not constitute “extraordinary and unforeseeable circumstances” justifying an extension of time beyond the Standing Order No. 12 limit.

That said, Ms. Barr explains in her affidavit that Mr. Donnelly has another case pending appeal — and that his two cases were consolidated for sentencing and may be tied together in ways that require her to review both cases together. We understand the reasons why such a review may be important. We will therefore extend the due date in this case to match the current due date in Mr. Donnelly's other pending appeal, File No. A-13597.

Accordingly, the motion for a non-routine extension of time to file the appellant's opening brief is **DENIED IN PART**. The opening brief in this case is due on or before **November 5, 2021**.

Entered at the direction of the Court.

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Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read 'Kaitlin D'Eimon', written over a horizontal line.

Kaitlin D'Eimon, Deputy Clerk

cc: Court of Appeals Judges
Distribution:

Email:
Barr, Sharon, Public Defender
Wendlandt, Diane L.